Business, delivery, and payment terms and conditions ("Business Terms and Conditions") for transactions with entrepreneurs and legal persons of public law

I. Scope of applicability

1. These Business Terms and Conditions are exclusively controlling for all – including future – legal relationships of a

(a) contractual (e.g. purchase contract, contract for manufacture and supply, contract for services)

(b) quasi-contractual (e.g. for pre-contractual obligations), and

(c) non-contractual (e.g. tort)

nature between us (the "Contractor") and the customer, even where special reference hereto is not made in a given case. This also applies where we make delivery to the customer without reservation despite our being aware of the customer having terms and conditions that conflict with or deviate from our Business Terms and Conditions. We acknowledge the customer's terms and conditions that conflict with or deviate from these Business Terms and Conditions only if we have expressly approved their applicability in writing.

2. A "customer" within the meaning of the above Business Terms and Conditions includes both the party that placed the order (irrespective of the type of contract) and the party to whom the invoice is to be issued in accordance with the customer's instructions. If there is more than one customer in this sense, all are jointly and severally liable.

3. Insofar as reference is made in the following to claims for compensation of damages, this also covers claims for reimbursement of expenses within the meaning of section 284 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB).

4. Material contractual duties mean those that protect the customer's legal positions material to the contract that must be specifically accorded to in accordance with the contract's substance and purpose. Such duties also include those that whose fulfilment is essential to enabling the contract to be performed properly and on whose compliance the customer normally relied to or is entitled to rely.

5. The assignment of the customer's claims under this contractual relationship, including the issuance of corresponding collection orders – provided that this does not involve money claims within the meaning of section 354 of the German Commercial Code (*Handelsgesetzbuch*, HGB) – requires our prior written consent.

II. Prices and price maintenance, offer and acceptance

1. These prices set forth in the Contractor's offer are non-binding and subject to change, unless they have been expressly characterised as binding. However, even in the latter case, they are subject to the proviso stipulated in Section II(2), as well as to the proviso that the data and particulars of the order underlying the offer submission remain unchanged. The Contractor's prices do not contain value-added tax (VAT; the latter is charged separately at the rate in effect on the date of invoicing) and are ex-works. They do not include packing, freight, postage, insurance, or other shipping costs.

2. If more than six weeks pass between conclusion of contract and delivery of the goods or other provision of services, and if factors that are external to the company or that in like fashion cannot be directly influenced by us result in increased costs (e.g. price rises in raw materials costs or other acquisition costs, including those imposed by input suppliers, exchange rate fluctuations), we reserve the ability to make corresponding price adjustments. We are not entitled to the aforementioned right in sentence 1 to make price adjustments to the extent that other acquisition costs/procurements costs fall in price and as a result lead to a (partial) offsetting of the aforementioned cost increase factors. If the new price is higher than the original price by 20% or more, the customer is entitled to rescind the contract. However, it may assert this right only immediately after being notified of the higher price. With regard to cost-increasing factors occasioned by public law (such as goods- or shipment-specific taxes, customs duties, etc.), we are entitled to a corresponding right to make price adjustments irrespective of the six-week period specified in sentence 1 of this subsection. The arrangement specified in sentences 3 and 4 concerning the customer's right of rescission remains unchanged.

3. If the order emanates from the customer's sphere and qualifies as an offer pursuant section 145 BGB, we may accept it within two weeks of receipt. Such acceptance may also occur though the sending of the ordered goods, the carrying out of the desired service, etc.

4. The costs of subsequent changes to the order made at the customer's request, including consequential costs caused by this (e.g. those of potential machinery downtime) are charged to the customer in addition.

5. Sketches, drafts, models, and similar preliminary work requested by the customer are charged at customary market rates, even where the order is not issued. The provisions of Section VIII of these Business Terms and Conditions apply mutatis mutandis.

III. Delivery and (other) performance(s), default

1. Deviations customary on the market remain reserved with respect to features, purity, quality, and colour. In general, a potential duty of consultation on our part (e.g. regarding specific characteristics of a certain good) presupposes a consultation agreement with corresponding content that was expressly concluded with the customer in writing.

2. Technical changes compared with prior deliveries or models remain reserved, including under a permanent contractual relationship. If the Contractor is also the manufacturer, the foregoing applies mutatis mutandis, under observance of the limits of what the customer can be reasonably expected to accept and where there are considerable Contractor interests (e.g. in order to achieve technical improvements, legal conformity, etc.). Transmitted models emanate from current production, which for technical reasons is subject to fluctuations customary on the market within certain tolerances. Models may therefore not serve as a reference within the meaning of a purchase "based on sample". No assurance of characteristics/guaranteed features of any nature whatsoever is associated with their conveyance.

3. Proper (including timely and correct) delivery on the part of our suppliers remains reserved. This applies not least to goods that are not in inventory and to fabrications for which we ourselves are reliant – at least in part – on input suppliers or other services of third parties.

4. The type of delivery is "EXW" pursuant to Incoterms 2000. At the customer's express written request, shipment can be made "CPT" or "CIP", whereby in each case the costs of the expanded scope of performance in excess of EXW are for the customer's account. For goods with a net value of less than € 50, we reserve the ability to charge a minimum quantity surcharge.

5. Delivery dates are binding only if they were expressly confirmed by the Contractor. If the contract is concluded in writing, the confirmation concerning the delivery date must also be given in writing. In addition, compliance with the agreed delivery date presupposes the clarification of all technical issues, as well as the fulfilment of all contractual obligations owed by the customer that are due at such time. The defence of unperformed contract remains reserved. The customer is moreover required to provide all information necessary for carrying out the order and to promptly make available all documentation necessary for carrying out the order. If, despite demand by the Contractor, the customer does not comply in a timely manner, we are entitled to consider such conduct to be a definitive anticipatory breach of contract from the customer's sphere and to assert the corresponding statutory consequences. Absent special, express agreement with corresponding content, the default-free compliance with delivery dates is not one of our material contractual duties (for the term, cf. above Section I(4) of the Business Terms and Conditions). Unless a different delivery date is agreed upon in writing, call-off orders are delivered not later than twelve months after issuance of the order.

6. Partial deliveries are permissible, provided that the customer can be reasonably expected to accept them. In such case, the customer is under a corresponding duty of partial payment.

7. (a) If in connection with a transaction calling for delivery by a specific date, default occurs within the meaning of section 286, para. 2, no. 4 BGB or section 376 HGB, or if a guarantee or procurement risk was (otherwise) assumed with respect to default-free delivery – which presupposes a corresponding, express written agreement – we are liable in accordance with statutory provisions. The same applies where default in delivery is based on a wilful or grossly negligent breach of contract for which we are responsible or the culpable breach of a material contractual duty (for the term, cf. above Section I(4) of the Business Terms and Conditions). Corresponding fault on the part of our representatives or persons used to perform an obligation (*Erfüllungsgehilfen*) is to be attributed to us. Also remaining unaffected is liability for culpable injury to life, body, or health. However, insofar as the default in delivery is based on a wilful breach of contract, the scope of our liability – other than the cases in sentence 4 – is limited to foreseeable damages that typically occur. In all other respects, we are liable in the case of default in delivery – provided that the customer substantiates the damages ensuing from this – for each completed week of default in connection with flat-rate compensation for default in the amount of 0.5% of the net delivery value concerned, but not more than 5% of the net delivery value (concerned).

(b) In the cases described in subsection 7(a), sentence 6, above, the customer may rescind the contract due to default in delivery only if we are responsible for same. This is not associated with a shifting of the burden of proof. Furthermore, in such cases, the customer may demand – alone or in addition to rescission – compensation of damages in lieu of performance only in accordance with Section VII of these Business Terms and Conditions.

(c) To the extent that the above arrangements in this Section III contain limitations and/or exclusions of liability, same is not associated with a shifting of the burden of proof to the customer. Default in delivery is equivalent to (other) default in performance. In that case, the net contract value is to be controlling in place of the net delivery value.

8. In the event of force majeure, e.g. mobilisation, war, unrest, natural disasters, and similar events concerning the contractual relationship for which we are not responsible, like strikes and lock-outs, we will promptly notify the customer about such circumstances. In such case, delivery deadlines are extended by a reasonable amount of time. If such events prove to be more than merely of a temporary nature, we are furthermore entitled to rescind the contract. This arrangement (entire subsection 7) does not apply if we assumed the procurement risk vis-à-vis the customer within the meaning of section 276 I 1 (end) BGB.

9. The Contractor is entitled to a right of retention pursuant to section 369 HGB in and to the manuscripts, raw materials, and other items and documents delivered to the customer until satisfaction in full of all claims that are due and owing under the business relationship.

IV. Payment terms

1. Payment (net price, plus VAT, plus, where applicable, other costs) must be made within 14 calendar days of the invoice date without deduction – including without deduction for early payment – in cash or by bank transfer. Invoices are issued with the date of delivery, partial delivery, or readiness for delivery (creditor obtains performance at the obligee's place of business (*Holschuld*), default in acceptance) or other performance. Bills of exchange are accepted only following special agreement and are subject to collection. The same applies to cheques. The customer bears bank discounting and fees. They are to be paid by it immediately. In the event that the bill of exchange is not honoured, the Contractor is not liable for its timely presentation, protest, notification, and return, provided that it or the persons it uses to perform an obligation did not act wilfully or with gross negligence (as fault in its own matters).

2. Advance payment in the amount of 50% of the total may be demanded for an order volume in the amount of more than € 2,500.00 (gross).

3. The customer is entitled to rights of set-off only if its counterclaims have been reduced to an enforceable judgment, are uncontested or acknowledged by us, or are based on the breach by us of a material contractual duty (for the term, cf. above Section I(4)). It is empowered to exercise a right of retention only if its counterclaim is based on the same contractual relationship.

4. Payments may not be made to our representatives, failing which they in no event serve to discharge the debt.

V. Cancellation of contract, default, and insolvency of the customer

1. If we expressly consent to the cancellation of a bindingly issued order, the buyer must pay us 10% of the order total (plus VAT), even where we do not expressly reiterate this at the time of cancellation. The same applies in the case of rescission of contract by the customer – for which we are not responsible – unless the customer demonstrates that the Contractor suffered no or only minimal damage. We reserve the ability to demonstrate higher damage.

2. If, following conclusion of the contract, the customer's financial circumstances experience a material deterioration or other circumstance become known that could jeopardise our claim to payment, if the customer is in default in the fulfilment of other obligations to us, a bill of exchange or cheque is not honoured when due, the customer in general ceases making its payments, or insolvency proceedings concerning its assets have at least been applied for (and this is not manifestly unwarranted), we are entitled to make continuation of an ongoing, longer-term supply or the currently intended supply, as well as continued work on ongoing orders, dependent on advance payment or the posting of security, in our discretion. Furthermore, we may rescind the contract in such cases, including to the extent that it has not yet been performed by us.

3. In the cases just specified in subsection 2, all other claims that we have against the customer become immediately due and payable, and any payment extension agreements become void. The same applies to any claims against the latter by companies affiliated with us (which in any event include those within the meaning of sections 15 et seq. of the German Stock Corporations Act (*Aktiengesetz*, AktG), including in analogous application of these rules to legal forms other than corporations, limited liability companies, and the like).

4. If payments are deferred or are made later than agreed upon, then starting on the due date, interest is charged in the amount of 8 percentage points above the base interest rate of the ECB. No warning or placement in default is required for this.

VI. Complaints, warranty and liability for defects

1. The customer's claims for defects presuppose that it has met in full its obligations owed under section 377 HGB to inspect and object, whereby any notices of defects must be given to us in writing. They further presuppose compliance with the operating data and the like set forth in our data sheets and the like. Absent special agreement, product descriptions, technical specification, etc. provided by us do not constitute a guarantee of features. The right to object to non-latent defects expires in any case after one week, starting on (and including) the day that the goods are received. Defects in a part of the delivered goods do not entitle objection to the entire delivery, unless the customer has no economic interest whatsoever in keeping the partial delivery.

2. If the customer approves a specific specification for the goods, then goods that are manufactured according to such specification, and as such properly, are free of defects even where, taking as a basis an objective concept of flaw, they could be considered defective or are ultimately unsuited to the purposes sought by the customer. Moreover, not constituting material defects are those material deviations in the quality of the materials procured by the Contractor that are declared to be permissible/in conformity with the contract according to the delivery terms and conditions of the corresponding input supplier or that are attributable to production technology and do not lead to a decline in quality.

3. If there is a defect in the goods at the time of transfer of risk, the customer is entitled – subject to the arrangement in subsection 9 – to a claim to cure, whereby we provide same, at our choice, in the form of elimination of defects or delivery of new, defect-free goods. In the case of elimination of defects, we bear – to the statutory extent – the expenses necessary for the purpose of eliminating the defects, including transport, road, labour, and materials costs, insofar as these do not increase as a result of the fact that the purchased item was relocated to a place different from the place of performance and such relocation does not correspond to its intended use.

4. If the cure fails, the customer is entitled, at its choice, to rescind the contract or demand reduction of the price.

5. We are liable in accordance with statutory provisions, insofar as the customer asserts claims for compensation of damages that are based on wilful misconduct or gross negligence or on the culpable breach of a material contractual duty (for the term, cf. above Section I(4)). Corresponding fault on the part of our representatives or persons used to perform an obligation is to be attributed to us. However, insofar as the claim to compensation of damages is not based on a wilful breach of contract, the scope of our liability is limited to foreseeable damages that typically occur.

6. The liability for culpable injury to life, body, or health and the assumption of a guarantee remain unaffected. This also applies to strict liability under the German Product Liability Act (*Produkthaftungsgesetz*).

7. Other than as provided above, liability is precluded.

8. For new goods, the prescription period for claims for defects amounts to six months, starting on the date of transfer of risk. In the cases of subsection 6, the wilful breach of duty, or the use of our goods for a structure, if this corresponds to its customary manner of use and caused the defectiveness of the structure, the statutory prescription rule continues to apply.

9. If we sell used goods, same have not been previously inspected by us for absence of defects, proper functioning, etc. In this case, the contractually consistent condition of the goods is their as-is condition. Therefore, irrespective of the arrangement in section
276 III BGB and subsections 5 and 6, above, they are sold under exclusion of the warranty for material defects.

10. The prescription period in the case of recourse against the supplier under sections 478 and 479 BGB remains unaffected. It amounts to five years, starting on the date of delivery of the defective item.

11. To the extent that the above arrangements in this subsection 6 contain limitations and/or exclusions of liability, same is not associated with a shifting of the burden of proof to the customer.

12. If there is a type of contract in place between the customer and us that does not provide for any independent statutory warranty right, the provisions of this Section VI are to be accordingly applied in such a way that we are under no circumstances liable more strictly or further for fulfilment than under the aforementioned section. If the statutory arrangement is in any case more favourable for the Contractor, same continues to apply.

13. We are entitled to label the goods with our company text, company logo, and company identification number. The customer is in agreement that models of goods made by us for the customer are used as illustrative material and for advertising purposes.

VII. Other liability

1. Other liability for compensation of damages, irrespective of the legal nature of the asserted claims and the type of contract, likewise exists only within the limits of Section VI(5) and (6) of these Business Terms and Conditions. This applies in particular – but not definitively – to claims for compensation of damage based on culpa in contrahendo, due to other breaches of duty, to non-defect-related claims for compensation of damage in lieu of performance, and due to tort claims for reimbursement of property damage pursuant to section 823 BGB. Other than for tort claims, which are prescribed in accordance with statutory provisions, the prescription period for these claims is 18 months, which begins to run upon knowledge of the damage and the identity of the damaging party. All farther-reaching liability for compensation of damage is precluded.

2. If our liability for compensation of damage is precluded or limited, this also applies with respect to the personal liability for compensation of damage on the part of our employees, representatives, and persons used to perform an obligation.

3. To the extent that the above arrangements in this Section VII contain limitations and/or exclusions of liability, same is not associated with a shifting of the burden of proof to the customer.

VIII. Safekeeping, insurance

Templates, raw materials, and other items serving reuse originating from the customer, as well as semi-finished and finished products, are held in safekeeping beyond the delivery date only after prior agreement and against special compensation. Until the aforementioned date, the Contractor's obligation covers the handling of same with care. The procurement of any desired insurance for the aforementioned items is solely the responsibility of the customer.

IX.Title, copyright, and other (industrial) property rights, indemnification

1. The Contractor retains title to the operating items used to manufacture the contract product, even where they are separately charged. Such items are not turned over.

2. In the event of infringements of industrial property rights and/or copyrights that are asserted by third parties in connection with goods delivered by us, the customer is obligated to notify us promptly and comprehensively of the relevant facts and circumstances, to refrain from acknowledging the alleged infringement, and to reserve for us all defence measures and settlement negotiations. If such infringements arise through the customer's special specifications or are not foreseeable to us or are based on the customer having modified our goods or connected them with third-party products not originating from us, the customer's claims are precluded. On the contrary, the customer must indemnify us in such cases against all claims of third parties. In addition, and absent special agreement, we are obligated only to keep our goods at the place of performance free of third-party industrial property rights and copyrights.

X. Retention of title

1. We retain title to the goods (here, also referred to as the "Goods Subject to Retention of Title") until receipt of all payments under the business relationship with the customer. In the event of conduct by the customer in breach of contract, including payment default, we are entitled to take back the goods. By taking back the goods, we rescind the contract. After taking back the goods, we are empowered to sell them, with the sales proceeds less reasonable costs of sale being set off against the customer's liabilities.

2. The customer is obligated to treat our Goods Subject to Retention of Title with care and to adequately insure them at replacement cost against damage due to fire, water, and theft.

3. The customer must give us prompt written notice about liens or other third-party encumbrances, so that we can take corresponding measures to preserve rights (e.g. a lawsuit pursuant to section 771 of the German Code of Civil Procedure (*Zivilprozessordnung*, ZPO)). If the third party is not capable of reimbursing us for the court and out-of-court costs of such measures, the customer is liable for the loss we suffer.

4. The customer is entitled to resell the goods in the normal course of business. It hereby assigns to us in the amount of the final invoice figure (including VAT) of our claim all claims to which it is entitled against its customers or third parties from the resale, irrespective of whether the goods have been resold without or after processing. The customer remains authorised to collect this claim after the assignment. Our power to collect the claim ourselves remains unaffected thereby. However, we undertake to refrain from collecting the claim as long as the customer is meeting its payment obligations from the collected proceeds, is not in payment default, and, in particular, an application for the initiation of insolvency proceedings has not been filed or payments have not ceased to be made. If however this is the case, we can demand that the customer discloses to us the assigned claims and the parties owing them, provides all information necessary for collection, turns over the related documents, and notifys the parties owing the claims (third parties) about the assignment. In addition, the customer hereby assigns to us in such cases its claims under section 48 of the German Insolvency Code (*Insolvenzordnung*).

5. The customer in all cases processes or reshapes the Goods Subject to Retention of Title on our behalf. If the goods are processed with other items not belonging to us, we acquire co-title in and to the new object in the ratio that the value of our goods (final invoice figure, including VAT) bears to that of the other processed items at the time of processing. In all other respects, the same applies to the object resulting from processing as to goods delivered under retention of title.

6. If the goods are inseparably commingled or amalgamated with other items not belonging to us, we acquire co-title in and to the new object in the ratio that the value of our goods (final invoice figure, including VAT) bears to that of the other amalgamated/commingled items at the time of amalgamation/commingling. If amalgamation/commingling occurs in such a way that the customer's object is to be considered the primary object, it is deemed agreed that the customer assigns to us pro-rata co-title. The customer safeguards for us the sole title or co-title resulting in this way.

7. At the customer's request, we undertake to release the security to which we are entitled to the extent that the realisable value of such security exceeds the claims being secured by more than 10%. The Contractor has discretion in choosing from among several types of security that come under consideration for release.

8. For lawsuits relating to retention of title, we are at liberty to sue a customer with registered office outside of Germany at its home court and under its home law. In the latter case, deemed agreed upon is an arrangement on retention of title that most closely approximates in economic terms the above arrangement on retention of title.

XI. Place of performance, place of jurisdiction and applicable law, miscellaneous

1. German courts have exclusive jurisdiction, both nationally and internationally, for all disputes resulting directly or indirectly under contracts between us and the customer to which these General Terms and Conditions apply (either in whole or in part). Also applicable is that solely the courts in the judicial district of the City of Neuss are to have local jurisdiction, unless a different, exclusive place of jurisdiction is mandated by statute. For the purposes of clarity, this arrangement on jurisdiction in sentences 1 and 2 also applies to those matters between us and the customer that can lead to non-contractual claims within the meaning of Regulation (EC) No 864/2007. The foregoing notwithstanding, however, we remain entitled to bring suit against the customer also at its registered office. Section X(8) likewise remains unaffected.

2. Applicable is the law of the Federal Republic of Germany, under exclusion of the applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Section X(8) remains unaffected. It is expressly clarified that this choice of law is also to be understood as one within the meaning of Article 14(1)(b) of Regulation (EC) No 864/2007 and is thus also to apply to non-contractual claims within the meaning of the aforementioned regulation. If application of foreign law is mandatory in a given case, our Business Terms and Conditions are to be interpreted in such a way as to preserve as far as possible the economic purpose pursued with them.

3. Unless provided otherwise in the order confirmation, our registered office is also the place of performance.

4. If, with regard to contracts that become a component of these Business Terms and Conditions through corresponding inclusion, one or more of their provisions or parts thereof outside of the aforementioned Business Terms and Conditions should be or become ineffective, particularly for reasons other than those in sections 305-310 BGB, same does not affect the effectiveness of the remaining provisions or their parts, as the case may be. Rather, in such case, the contracting parties are obligated to collaborate on a new arrangement that most closely corresponds to the economic intentions of the relevant provisions/their parts. The same applies in the case of contract gaps in need of supplementation. Section 306 II BGB remains unaffected.

Status August 2021